

Internal Revenue Service

Number: **201010017**

Release Date: 3/12/2010

Index Number: 42.00-00, 9100.01-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B05

PLR-134491-09

Date:

November 23, 2009

LEGEND

Taxpayer =

Project =

General Partner =

Special Limited Partner =

Agency =

a =

b =

c =

d =

e =

Dear :

This letter responds to your authorized representative's letter dated July 21, 2009 requesting an extension of time to make an election under § 42(g)(1) of the Internal Revenue Code pursuant to § 301.9100-1 of the Procedure and Administration Regulations. Taxpayer makes the following representations.

Project, a e-unit low-income housing project, was placed-in-service on a. A Form 8609, "Low-income Housing Tax Credit Allocation and Certification," for Project was issued to Taxpayer in b. In c, a representative of the General Partner, on behalf of Taxpayer, sent the Form 8609 to the Internal Revenue Service without completing Part II. In d, the Service returned the incomplete Form 8609 to Taxpayer for completion. The representative of the General Partner consulted with Taxpayer's accountant as to the correct set-aside to elect for Project and was advised to elect the 40/60 set-aside under § 42(g)(1)(B). The 40/60 set-aside is consistent with information found in various Project documents completed prior to the filing of the Form 8609. The representative of the General Partner completed and returned the Form 8609 to the Service, however, inadvertently filed a Form 8609 with the 20/50 set-aside under § 42(g)(1)(A) elected for Project instead of the intended 40/60 set-aside under § 42(g)(1)(B). The error was discovered when the Special Limited Partner requested a completed copy of the Form 8609 from the General Partner as part of its periodic review of Project.

Section 42(g)(1) defines the term "qualified low-income housing project" as any project for residential rental property if the project meets the requirements of § 42(g)(1)(A) or (B), whichever is elected by the taxpayer. The project meets the requirements of § 42(g)(1)(A) if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. The project meets the requirements of § 42(g)(1)(B) if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Any election under § 42(g)(1), once made, is irrevocable.

Section 301.9100-7T(b) of the temporary Procedure and Administration Regulations provides that for elections under the Tax Reform Act of 1986, the election under § 42(g)(1) must be made for the taxable year in which the project is placed in service and shall be made in the certification required to be filed pursuant to § 42(l)(1). Section 301.9100-7T(a)(4)(i) provides that the election under § 42(g)(1) is irrevocable.

Section 42(l)(1)(D) provides, in part, that following the close of the first taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall

certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes) the election made under § 42(g) with respect to the qualified low-income housing project of which such building is a part. In the case of a failure to make the certification required by the preceding sentence on the due date prescribed therefore, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of § 42(a) with respect to such building for any taxable year ending before such certification is made.

Section 1.42-1(h) provides, in part, that unless otherwise provided in forms or instructions, a completed Form 8609 (or any successor form) must be filed by the building owner with the IRS. The requirements for completing the Form 8609 are addressed in the instructions to the form.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3(a) will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In the instant case, based solely on Taxpayer’s facts submitted and its representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time to make the election under § 42(g)(1)(B) for Project by filing within 60 days from the date of this letter an amended Form 8609 that includes the intended election. The amended Form 8609 (along with a copy of this letter) is to be filed with the Philadelphia Service Center at the address provided for the Service Center in that form. A copy of this letter is enclosed for this purpose.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether Taxpayer's low-income housing project otherwise qualifies for the low-income housing tax credit under § 42.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

cc: